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मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 114]

भोपाल, शनिवार, दिनांक 1 मार्च 2014—फाल्गुन 10, शक 1935

नवीन एवं नवकरणीय ऊर्जा विभाग
मंत्रालय, वल्लभ भवन, भोपाल

भोपाल, दिनांक 1 मार्च 2014

क्र. एफ 3-19-2013-साठ.—मंत्रि-परिषद् की दिनांक 18 फरवरी 2014 को सम्पन्न बैठक में लघु जल आधारित विद्युत परियोजना के क्रियान्वयन हेतु “जल विद्युत विकास अनुबंध (HPDA)” को अनुमोदित किया गया है। सर्व-साधारण की जानकारी के लिये उक्त जल विद्युत विकास अनुबंध (HPDA) का प्रकाशन “मध्यप्रदेश राजपत्र (असाधारण)” में किया जा रहा है।

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
एस. आर. मोहन्ती, अपर मुख्य सचिव,

DRAFT

HYDRO POWER DEVELOPMENT AGREEMENT

FOR

DEVELOPMENT OF [INSERT NAME OF THE
PROJECT] HYDROPOWER PROJECT

TO BE SET UP AT [INSERT NAME OF THE
PLACE, DISTRICT] IN THE STATE OF MADHYA PRADESH
ON BOOT BASIS

BETWEEN

Commissioner
New and Renewable Energy
Bhopal

AND

M/s
(Insert name of the Company)

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कल्पना जैन, अवर सचिव.

This **Hydro Power Development Agreement** (hereinafter referred to as the "Agreement" or "this Agreement") entered into on this day of the month of, 20 ..

BETWEEN

The Commissioner, New and Renewable Energy, Bhopal having office at Urja Bhawan, Shivaji Nagar Bhopal-(hereinafter referred to as "GoMP-NRE" or "GoMP" or "Government", which expression shall unless repugnant to the context thereof shall include its permitted successors, assigns and legal representatives) of FIRST PART.

AND

M/s (Name of the Company), having its office at(hereinafter referred to as the "Company" or "Generating Company", which expression shall unless repugnant to the context thereof includes its permitted successors, administrators and permitted assigns), through Mr., (Designation), who is duly authorized by the Company vide Board of Resolution issued by its Board of Directors on (date), to execute this Agreement of SECOND PART;

(each of the Party are individually referred as "Party" and collectively as the "Parties")

WHEREAS:

A. GoMP vide its notification No. 350, dated 21 July, 2011 has vested the responsibility, to deal with all the matters of GoMP policy, with respect to hydro power projects (up to 25 MW) with its New & Renewable Energy Department;

B. The Government of Madhya Pradesh has notified the "Policy for implementation of Small Hydro Power projects in Madhya Pradesh—2011" (hereinafter referred to as "Policy") via notification NO. 482, dated 03 November, 2011 to promote the generation of electricity from Small Hydro Power (hereinafter referred to as "SHP") projects in Madhya Pradesh;

C. The GoMP invited proposals vide notification number invited offers from the prospective developers of small hydel projects in the state under self identified/government identified (select as appropriate) category;

D. M/s (Name of the Company) has submitted a proposal vide their letter (ref. no. dated) along with a payment of prescribed commitment fee/project fee (select as appropriate) of amount Rs. (payment mode ref no bank , date) for the development of a Small Hydro Power Project (hereinafter referred to as "Project"), on Build, Own, Operate and Transfer (hereinafter referred to as "BOOT") basis, of installed capacity (Proposed) MW on river near village of tehsil in district of Madhya Pradesh;

E. The Company has submitted a proposal for the development of abovementioned Project at self-identified site/ Government identified site (Select as appropriate). Also, the Project has been issued No-Objection Certificate (hereinafter referred to as "NOC") by the Water Resources Department/Narmada Valley Development Authority (NVDA), MP Power Generating Co. Ltd etc., (Select as appropriate) vide letter (ref. no. , dated);

F. GoMP-NRE has given permission, by way of issuance of Letter of Allotment (hereinafter referred to as "LOA") for development of the abovementioned Project to M/s vide its letter (ref. no. dated.) on river near village of tehsil in district of Madhya Pradesh, a copy of which is annexed to this Agreement as Schedule 1, subject to fulfillment of the terms and conditions contained therein;

G. The Company, vide Letter no. dated, 20 ..., a copy of which is annexed to this Agreement as Schedule 1, has accepted the Lo A from GoMP and furnished a performance guarantee of amount Rs. (Payment mode., ref. no., bank, dated) in the approved format and plans to develop the Hydro Power Project as Captive Power Producer/Independent Power Producer (Select as appropriate) with its own funding;

H. The Company agrees to obtain all the necessary approvals including Approval for Detailed Project Report (hereinafter referred to as "DPR") from GoMP and to achieve all the milestones, as specified under relevant provisions of the Policy and this Agreement;

I. The Company agrees to obtain necessary clearance(s) from the concerned Transmission/Distribution Licensee for evacuation of power as required under Indian Electricity Act 2003; and

J. The Company is now desirous of undertaking the implementation of the Project in accordance with the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and intending to be legally bound hereby, both the Parties agree to the terms and conditions set forth as follows:

1. DEFINITIONS & INTERPRETATIONS

1.1. Definitions.—In this Agreement, following words and expression shall, unless repugnant to the context or meaning thereof, have the meanings hereinafter respectively assigned to them:

"**Act**" shall mean the Electricity Act 2003 as amended from time to time or any succeeding enactment thereof;

"**Agreement**" means this Hydropower Development Agreement together with Schedules hereto;

"**Agreement Period**" shall have the meaning as ascribed thereto in Article of this agreement;

"**Approval**" shall mean the agreement of GoMP to the Project details specified in the DPR submitted by the Company;

"Board or MPSEB" means Madhya Pradesh State Electricity Board and/or its successor entities such as Madhya Pradesh Power Management Company Limited (MPPMCL), Madhya Pradesh Power Generating Company Limited (MPPGCL), Madhya Pradesh Power Transmission Company Limited (MPPTCL), Madhya Pradesh Poorv Kshetra Vidyut Vitaran Company Limited (MPPKVVCCL, Jabalpur), Madhya Pradesh Paschim Kshetra Vidyut Vitaran Company Limited (MPPKVVCCL, Indore), Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited (MPMKVVCCL, Bhopal);

"BOOT" shall mean Build, Own, Operate and Transfer;

"CERC" shall mean the Central Electricity Regulatory Commission referred to in sub-section (1) of Section 76 of the Electricity Act, 2003;

"Commercial Operation" shall mean the state of unit/Project when unit/Project is capable of delivering Active Power and Reactive Power on a regular basis after having successfully completed the commissioning as per Prudent Utility Practices;

"Commercial Operation Date" or **"COD"** shall mean the date on which the Commercial Operation of Unit/Project as the case may be is achieved by the Developer;

"Commitment Fee" shall mean the fee deposited by interested bidders along with their proposals for the development of projects on government identified sites;

"Consents, Clearances and Permits" shall mean all authorizations, licenses, approvals, registration, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any Governmental Instrumentality for the development, execution and operation of Project including without any limitation for the construction, ownership, operation and maintenance of the Project;

"Debt" shall mean the amount of any loan, non-convertible debenture or other financial facility except Equity, raised and received by the Company under the Financing Agreements, and actually expended or to be expended for the Project and which shall not be greater than the principal amount of debt specified in the applicable currency in the estimate of Project Cost as per the DPR approved by the GoMP.

"Detailed Project Report" or **"DPR"** shall mean the Project Report submitted by the Company after carrying out necessary detailed investigations and confirmatory surveys in the form as mutually agreed between the GoMP and Company for seeking DPR Approval from the GoMP;

"Dispute" shall have the meaning as ascribed thereto in Article 10;

"Effective Date" shall mean the date of signing of this Agreement;

"Energy" means the electrical energy in Kilowatt hours (Kwh);

"Equity" shall mean the aggregate of all subscribed and paid up share capital of the Company in different currencies as converted to Rupees, and invested in the Project and held by one or more shareholders in the Company, which shall be in accordance with the financing plan as per the DPR approved by GoMP.

"Financial Closure" shall mean the date on which the Financing Agreements providing for funding by the Lenders to the Company for the Project have become effective and the Company has immediate access to such funding under the Financing Agreements;

"Financing Agreements" means the documents executed by the Company in respect of financial assistance to be provided by the Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, notes debentures, bonds and other debt instruments, security agreements and other documents relating to the financing (including refinancing) of the Project and includes amendments or modifications thereto made from time to time;

"Force Majeure" shall have the meaning as ascribed thereto in Article 7 of this Agreement;

"Free Power" shall mean the Net Energy made available by the Company to the MPPMCL free of charges from the Project as per terms and conditions of the PPA for free energy with MPPMCL;

"Gol" shall mean the Government of India;

"GoMP" or **"Government"** shall mean the government of the State of Madhya Pradesh;

"Governmental Instrumentality" shall mean;

Government of Madhya Pradesh and/or Government of India; and/or

any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of Madhya Pradesh, and/or

any ministry, department, board, authority, agency, commission under the direct or indirect control of Gol; or

any political sub-division including any court or commission or tribunal or judicial or quasi-judicial body in the State of Madhya Pradesh or/and includes the MPERC;

Supreme Court of India or commission or tribunal or judicial or quasi-judicial body of the Gol but excluding the Company;

"IEGC" or **"Indian Electricity Grid Code"** shall mean a document describing the philosophy and the responsibilities for planning and operation of India power system approved by CERC;

"Independent Power Producer" or **"IPP"** shall mean a SHP Project set by any person as defined in Electricity Act, 2003 for generating electricity, which can be sold to any consumer located in the state of Madhya Pradesh or any other Willing Distribution Licensee or any Power Trading Company;

"Installed Capacity" shall mean the summation of the name plate capacities of all the Units of the Project;

"Interconnection Facilities" shall mean all the facilities which shall include without limitation, switching equipment, communication, protection, control and metering devices, etc., at the Interconnection Point to be installed and maintained at the cost of the Company to enable evacuation of power output from the Project in accordance with this Agreement;

"MP Power Management Company Limited (MPPMCL)" or **"Procurer"** shall mean the Madhya Pradesh Power Management Company Limited or its successor or its legal assignee including any corporate entity incorporated by the GoMP as a result of restructuring to take over its functions;

"MPERC" or **"Madhya Pradesh Electricity Regulatory Commission"** shall mean the State Electricity Regulatory Commission established under sub-section (64) of Section 2 of the Electricity Act, 2003;

"Month" shall mean a period of 30 (thirty) days from (and excluding) the date of the event, where applicable else an English calendar month;

"MoEF" shall mean Ministry of Environment & Forests, Govt. of India or its successor authority;

"Performance Guarantee" shall mean the irrevocable unconditional bank guarantee, submitted and to be submitted by the Company or by the Selected Bidder on behalf of the Company to the GoMP from any nationalized bank, in the form specified and which shall include the additional and balance bank guarantee furnished by the Company under this Agreement;

"Permanent Works" shall mean the permanent works forming part of the Project that are required to be constructed, installed and maintained as such for the implementation of the Project for at least the expiry date of PPA;

"Policy" shall mean the policy for implementation of shall hydel power based electricity projects as per GoMP's notification no 482, dated 03 November, 2011 and its subsequent amendments;

"Power Purchase Agreement for free energy" or **"PPA-Free energy"** shall mean the agreement executed between the MPPMCL and Company for supply of free power from the Project as per terms and conditions of the said agreement;

"Project" shall mean the SHP project having an installed capacity of MW as per Detailed Project Report proposed in the district in the State of Madhya Pradesh on BOOT basis as precisely described in Schedule 2 and shall include the following :

hydro power generation facility comprising of any or all the Units, water conductor system, penstock, head and tail works, main and regulating reservoirs, dams and other hydraulic works, of the power generation facility referred to above;

all the other assets, buildings structures including project roads, bridges, offices, residential facilities stores, guest houses, equipments, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility;

"Project Fee" shall mean the fee deposited by interested developers along with their applications for the development of Project on their self identified sites;

"Prudent Utility Practices" shall mean practices methods, techniques and standards, as changed from time to time that are generally accepted internationally by electric utilities from time to time for the purpose of ensuring safe, efficient and economic design, engineering construction, commissioning, testing, operation and maintenance of various components of the Project of the type specified in this Agreement and which practices, methods and standards shall be adjusted as necessary to tasks into account;

installation, operation and maintenance guidelines recommended by the manufacturers of plant and equipment to be incorporated in the Project

the requirements of applicable Law;

conditions affecting the Grid System; and

physical conditions at the Project

"Revised Scheduled Commercial Operation Date" shall mean the revised date fixed by the GoMP for COD of the Project after according approval to the extension of the Scheduled Commercial Operation Date;

"Scheduled Commercial Operation Date" shall mean the date by which the commissioning of the Project is to be achieved and such date shall not be beyond the timelines as specified in the Policy (Schedule 1) from the date of signing this Agreement unless extension is granted by the GoMP for delays occurring beyond the control of Company;

"Site" shall mean the site of Project appurtenances, generating plant including land, waterways, roads and any rights acquired or to be acquired by the Company for the purposes of the Project;

"State" shall mean the state of Madhya Pradesh;

"State Grid Code" shall mean the set of principles and guidelines specified by MPERC in accordance with the terms of section 86 (1) (h) of Electricity Act, 2003;

"State Load Dispatch Centre" or **"SLDC"** shall mean the centre established under subsection (1) of section 31 of the Act;

"Temporary Works" shall mean all temporary works of any kind required in connection with the implementation of the Project and that are incidental and ancillary to the design, engineering and construction of the Project and are constructed / installed and maintained till the Commercial Operation Date for the Project, and not forming part of Permanent Works;

"Unit" shall mean one Hydro turbine and generator and its associated auxiliaries including other auxiliaries of the Project;

"Wheeling Agreement" shall mean the Agreement between the Company and Transmission Licensee/ Distribution Licensee for transportation of electricity generated from generating station from interconnection point of generating station to the consumption point;

"Works" shall mean all the Permanent Works and the Temporary Works required and necessary for the implementation of the Project and shall also include works of civil, electrical, mechanical, control and instrumentation in nature and including design, engineering construction installation and commissioning services, supplies and other work activities; and

"Year" shall mean financial year beginning on 1st April and ending on 31st March.

1.2. Interpretations.—In this Agreement, unless the context otherwise requires:

- 1.2.1. Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder.
- 1.2.2. The references to persons and words denoting natural persons shall include bodies corporate and partnerships, joint ventures and statutory and other authorities and entities.
- 1.2.3. The nomenclature of the Agreement, headings and paragraph numbers are for the convenience of reference and shall be ignored in construing or interpreting the Agreement.
- 1.2.4. Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended varied, supplemented, modified or suspended at the time of such reference provided that this Clause shall not operate so as to increase the liability or obligations of any Party hereunder or pursuant hereto in any manner whatsoever.
- 1.2.5. Any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days and dates.

1.2.6. Unless otherwise expressly provided in this Agreement, any documentation required to be provided or furnished by the IPP to GoMP shall be provided free of cost and in three copies and if GoMP are required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

2. TERM OF THE AGREEMENT

2.1. **Effectiveness.**—The Agreement shall come into effect from the Effective Date of this Agreement.

2.2 **Agreement Period.**—This Agreement shall remain in force up to a period of thirty-five (35) years or life of the project whichever is earlier after the Commercial Operation Date of the Project, unless terminated earlier in accordance with the provisions of this Agreement.

2.3 **Early termination.**—This Agreement shall terminate before the Agreement Period :

- i. If either the GoMP or Company exercises a right to terminate, pursuant to Article 3.1.4, Article 3.3.1, Article 3.3.4, Article 3.3.5, Article 7.6 and Article 9 of this Agreement or any other provision of this Agreement; or
- ii. In such other circumstances as the Company and the GoMP may mutually agree, in writing.

2.4 **Transfer of Site.**— i. In case of early termination as per Article 2.3, the Company shall transfer the Site and all the assets thereupon, free of all encumbrances, to the GoMP within 30 (thirty) days from the last day of the Termination Notice, subject to the provisions of Article 9. It is clarified for removal of doubt that this Article shall survive the termination of this Agreement.

ii. At the end of BOOT period, the entire project, including its movable or immovable assets of water structures and power generation, shall be transferred to the State Government Free of cost.

3. CONDITIONS SUBSEQUENT TO BE SATISFIED BY THE COMPANY AND THE GoMP

3.I. Satisfaction of conditions subsequent by the Company

3.1.1. Prior to the Effective Date of this Agreement, the Company has made the payment of prescribed commitment fee/project fee (Select as appropriate) of amount Rs. (payment mode ref. no. bank dated.....) and has also furnished the performance guarantee of amount Rs. (Payment mode ref. no bank dated.....) in the approved format. The aforesaid amount of the Commitment fee / project fee and performance guarantee shall be subject to increase if the Installed Capacity of the Project is increased pursuant to the Approval accorded by GoMP to the DPR;

3.1.2. The commitment fee / project fee shall be recalculated based on the Installed Capacity as determined in accordance with the DPR (approved by GoMP) at the rate of Rs. 1 (one) Lakh per MW, whereas the amount of the performance guarantee shall be recalculated at the rate of Rs. 1 (one) Lakh per MW. The difference between the amounts for commitment fee / project fee and performance guarantee as ascertained based on the details in the DPR (approved by GoMP) and as furnished by the Company shall be the balance commitment fee / project fee and balance performance guarantee, respectively. The Company undertakes to make payment for the balance commitment fee / project fee and furnish the balance performance guarantee in the approved format within thirty (30) days of the demand made by the GoMP in this regard. The Company shall be responsible for the payment of any taxes, charges and fees in connection with the commitment fee / project fee and performance guarantee;

For avoidance of doubt, it is clarified that there shall be no decrease in the project fee and performance guarantee incase of projects under category-2 however for projects under category-1, the commitment fee shall be proportionately refunded in case the Installed Capacity of the Project is reduced, pursuant to the preparation of the DPR and upon Approval thereof by the GoMP.

3.1.3. The Company shall submit additional performance guarantee equivalent to 0.5% (half percent) of the Project cost, as mentioned in the DPR approved by the GoMP, within 30 (thirty) days after achieving Financial Closure. This additional performance guarantee shall remain valid for a period of 3 (three) months from the Revised Scheduled Commercial Operation Date;

3.1.4. The Company shall conduct all surveys, studies and investigations as may be considered necessary by it for the preparation of DPR and for determination of the economic viability of the Project. The Company shall obtain all the necessary approvals and clearances including approval of DPR and achieve Financial Closure within 24 (twenty-four) months from the effective date of this Agreement.

If for any reason not attributable to the Company, the Company is not in a position to complete the above mentioned activities within 24 [Twenty-four] months from the effective date of this Agreement, the GoMP may extend the timeline as may be mutually agreed upon subject to a maximum period of 6 (six) months.

Further, if the Company is not in position to execute the Project for want of an approval from the GoMP or Gol, this Agreement shall then be terminated and the commitment fee/project fee and performance guarantee shall be released to the Company.

3.1.5. The Company shall not transfer the project to any other entity for a period of five years from the CoD.

3.1.6. The Company shall be liable to obtain Environment clearance as required under the Environment (Protection) Act, 1986 and as per Environment Impact Assessment (hereinafter referred to as "EIA") Notification dated 14th September, 2006 and as amended from time to time.

3.1.7. In case the Company fails to obtain the necessary approvals and/or achieve Financial Closure within the above mentioned period/even after timeline extension, this Agreement shall stand automatically terminated and the performance guarantee shall be forfeited by the GoMP.

3.1.8. The Company shall ensure that the Project is commissioned within (Insert as applicable: in case of Project with installed capacity up to 5 MW-35 (thirty-five) months/in case of Project with installed capacity more than 5 MW and up to 10 MW-40 [forty] months/in case of Project with installed capacity more than 10 MW and up to 25 MW-48 [forty eight] months) from the date of signing this Agreement.

In case, GoMP, pursuant to Article 3.1.4, extends the period for obtaining necessary approvals and financial closure, the Commissioning period will be extended accordingly.

3.2. Satisfaction of conditions subsequent by the GoMP:

3.2.1. The GoMP shall validate the DPR within a period of 3 (three) months from the date of submission of DPR by the Company and convey the results and Revised Scheduled COD of each Unit and the Project of the Company. The developer shall submit at least 3 months prior to submission of DPR the **hydrology, hydraulic design & water planning** of the hydro power structures **as per IS: 6966** for obtaining approval of the concerned department (NVDA/WRD/MPPGCL etc. as may be required). The developer shall depute well acquainted support for explaining the design to the concerned department as may be required. The validation of DPR shall be considered only after getting clearances of designs by the concerned GoMP department.

3.2.2. If government land is available for the development of project then permission for land use shall be provided only for establishment of water carrier system, sub-station and power house construction necessary for hydel power plant. The land use permission shall be given in accordance with the procedure laid down in the policy under clause 5.7.1 Part A. The developer need to apply with the nodal office, within 18 months from the effective date, the detail of government land mentioning the khasra number and area required for the aforesaid structures.

3.3. Consequences of non-fulfillment of conditions:

3.3.1. Subject to Article 3.3.4, if fulfillment of any of the conditions specified in Article 3.1 is delayed beyond the period (including extensions, if any) specified for the respective conditions subsequent, the GoMP shall have the right to terminate this Agreement by giving a Termination Notice to the Company in writing of at least 30 (thirty) days.

3.3.2. If the GoMP elects to terminate this (Agreement in the event specified in Article 3.3.1, the GoMP shall invoke the Performance Guarantee, forfeit the commitment fee/project fee and any other payment made by the Company till the date of issuance of such Termination Notice.

3.3.3. It is clarified for removal of doubt that this Article 3.3 shall survive the termination of this Agreement.

3.3.4. In case of inability of either Party to fulfill the conditions specified in Article 3.1 and 3.2 due to any Force Majeure event, the time period for fulfillment of the condition subsequent as mentioned in Article 3.1 and 3.2, shall be extended for the period of such Force Majeure event, subject to a maximum extension period of 12 (twelve) Months, continuous or non-continuous in aggregate. Thereafter, this Agreement may be terminated by either the GoMP or the Company by giving a notice of at least 30 (thirty) days, in writing to the other Party.

It is clarified that the GoMP shall return/release the Performance Guarantee in the event of termination of this Agreement by any Party under this Article.

3.3.5. Provided that, due to the provisions of Article 3.3.4, any increase in the time period for completion of condition subsequent mentioned under Article 3.1, shall also lead to an equal increase in the time period for Scheduled COD.

3.4. Return of Performance Guarantee:

3.4.1. The Performance Guarantee as submitted by the Company in accordance with Articles 3.1.1 and 3.1.2 shall be released by the GoMP within 3 (three) Months from the Commercial Operation Date of the Project.

3.4.2. The release of the Performance Guarantee shall be without prejudice to other rights of the GoMP under this Agreement.

4. OBLIGATIONS AND RESPONSIBILITIES

4.1. Obligations of the Company:

4.1.1. The Company undertakes to be responsible at its own costs and risk for the execution of the project in a timely manner to be commissioned no later than its Revised Scheduled Commercial Operations Date.

4.1.2. The Company shall work with and co-operate in good faith with the GoMP with respect to all of the obligations and rights hereunder.

4.1.3. Monitoring and supervision of the Project :

- i. The Company shall furnish to the GoMP quarterly progress reports of obtaining Consents Clearances and Permits for setting up, owning, operating and maintaining the Project and achieving Financial Closure of the Project. The Company shall also provide 2 (two) copies each of the Consents Clearances and Permits, as and when the same are obtained.
 - ii. From the date of entering into HPDA, till the CoD of the project, the Company shall submit quarterly progress reports along with the related documents. The progress report will be verified, the progress should be according to the time limits prescribed in the policy for implementation of shall hydro power projects. In case of any delay in achievement of prescribed timelines, the Company has to submit satisfactory reason thereto.
 - iii. The Company shall ensure that the Project related agreements as may be executed by the Company with the third parties do not in any way hold the GoMP liable to the Company or any contractor in any manner whatsover and shall be without prejudice to the rights of GoMP hereunder.
 - iv. The Company shall, at all times, afford access to the Site to the authorised representatives of the GoMP and to the persons duly authorised by any Governmental Instrumentality having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority and upon reasonable notice. The Company shall provide to such persons reasonable assistance and necessary information to carry out their respective duties and functions with minimum disruption to the construction of the Project consistent with the purpose for which such persons have gained such access to the Site.
- 4.1.4. Interfacing arrangements, including the transformer panels, protection, metering etc., from the point of view of generation to the nearest sub-station or an interconnection point shall be the responsibility of the developer, subject to fulfillment of technical and safety parameters in accordance with the Madhya Pradesh State Grid Code, Madhya Pradesh Electricity Supply Code, 2004, M. P. Electricity Regulatory Commission and Central Electricity Regulatory Commission regulations as amended from time to time. This task may be done by the Madhya Pradesh Power Transmission Company Limited (MPPTCL) and/or the other concerned Distribution Company of the state of MP, the cost of which shall be borne by the developer. In this regards the decisions taken by M. P. Electricity Regulatory Commission will be final.

4.1.5. Insurance of Plant :

During the tenure of BOOT agreement the Company shall ensure proper insurance of all the assets of the project and shall maintain and upkeep the same in such a way that after expiration of BOOT period when assets are to be transferred to State Government or its agency then assets must be in fair condition, During transfer the plant must be in running condition and complete details of the plant along with the details and insurance papers regarding any major changes made in plant after its commissioning shall be submitted at the time of handing over of plant.

4.1.6. Rehabilitation and resettlement plan :

The Company shall execute and implement where ever required, at its own cost, the rehabilitation and resettlement plan prepared in consultation with the GoMP and as approved.

4.1.7. Safety measures :

The Company shall ensure proper safety measures during implementation of the Project including any geological study, construction and testing at the Site. The GoMP shall have the right to institute an appropriate mechanism to ensure compliance by the Company in this regard.

4.1.8. Alternative facilities :

In case any existing facilities including, but not limited to, irrigation systems, water supplies, roads, bridges, buildings, communication system(s), power systems and water mills are affected because

of the implementation of the Project, the Company shall be responsible and bear the cost of taking remedial measures. The Company shall not interfere with any of the existing facilities till an alternate facility is created as approved by the concerned department.

4.1.9. Ensuring flow of water :

The Company shall ensure such minimum flow of water immediately downstream of the weir/barrage/dam for downstream requirements as specified by concerned department of the GoMP during clearance of water planning as per clause 3.2.1 to meet the demand of irrigation, drinking water etc which shall always have first right.

4.1.9.1 No water charges will be levied if there is no loss of diverted water during operation and the diverted quantity is released back to parent stream without loss.

4.1.9.2 If Company desires to utilize any water other than generation of power, then for use of such water separate permission has to be obtained from Water Resources Department/NVDA/MPPGCL (as applicable).

4.1.9.3 Whenever GoMP decides to levy water—charges for water used in SHP, then such charges shall be payable.

4.1.10. Protection of fish culture:

The Company shall take appropriate steps, as may be required for the protection of fish fauna etc. in the Project area. The Company shall enter into a separate agreement with the concerned department of the GoMP in this regard on case to case basis and comply with the instructions of that department.

4.1.11. Fishing, recreational and navigational rights :

The fishing, recreational and navigational rights in the river, water, channels, reservoirs lakes shall remain vested with the GoMP subject only to such restrictions as may be necessary for the operational requirements, safety and security of the Project.

4.1.12. Maintaining ecological balance :

The Company shall be responsible for maintaining the ecological balance by preventing deforestation, water pollution and defacement of natural landscape in the vicinity of project area. The Company shall take all reasonable measures to prevent any, unnecessary destruction, scarring or defacement of the natural surroundings in the vicinity of the Project area.

4.1.13. Dumping of excavated material :

The Company shall ensure that the material excavated from the Site shall be dumped in the area duly approved by the GoMP and shall refrain from causing pollution and damage to the environment and take all necessary steps for protection of environment.

4.1.14. Use of facilities:

Subject to availability, security, safety, law, order, and operational factors being met, the Company shall permit free use, by the GoMP and the general public, of all service roads constructed and maintained by it for the Project after the Project has been commissioned.

4.1.15. Archaeological findings, treasures etc :

All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site shall be deemed to be the absolute property of the GoMP. The Company shall take reasonable precautions to prevent its workmen or any other persons from damaging any such article or thing. The Company shall arrange to hand over the same to the GoMP free of cost, provided that, in case any precious or semi-precious material is located, the Company shall inform the GoMP immediately and abide by the directives of the GoMP which shall be communicated within a period of 15 (fifteen) days from the date of receipt of such intimation from the Company.

4.1.16. Quality of workmanship :

The Company shall ensure that the Project is designed, built and completed in a good workmanlike manner using sound engineering construction practices and using only materials and equipment that are new and of international utility grade quality such that, the useful life of the Project will be up to such period as specified in the PPA.

4.1.17. Labour and compliance with labour/industrial and other laws:

Company shall at its expenses, ensure due compliance with all applicable Laws, including industrial and labour laws and regulations and by-laws both of the Gol and GoMP and all other local authorities and shall keep the GoMP indemnified in respect thereof.

4.1.18. The Company, while providing employment for construction as well as operation and maintenance activities, shall endeavor to give preference to locals as per their availability and suitability and shall also give preference to locally manufactured materials/components for construction and maintenance of the Project subject to availability and suitability of the same.

4.1.19. The Company shall set up the Project within the coordinates specified by the GoMP at the time of according DPR Approval. No change shall be allowed to after the location of head works and power house. In case change in Site is warranted from geological surprise or other such reasons, the same shall be decided by the GoMP.

4.1.20. Execution of upstream and downstream projects:

By executing this Agreement, the Company acknowledges the right of GoMP to develop/allot other schemes proposed to be executed in the upstream and downstream as also in the vicinity of the project and shall not have any objection to the development/allotment of upstream or downstream or in the vicinity of the Project hydro power projects (including development/diversion of water for irrigation, flood control and water supply etc.) or any other scheme or project being developed or to be developed by the GoMP.

4.1.21. Plant operation and maintenance :

The Project shall be operated and maintained up to the installed Capacity. The Company shall follow the directives of the SLDC in the interest of integrated grid operation.

4.2. Obligations and responsibilities of the GoMP

4.2.1. Assistance in obtaining clearances:

The GoMP shall facilitate the Company in obtaining the Consents, Clearances and Permits required for the implementation of the Project, from various competent authorities of the GoMP/Gol on best effort basis. The responsibility of obtaining these Consents, Clearances and Permits shall, however, rests with the Company only.

4.2.2. Use of materials :

The GoMP shall permit the Company, in accordance with the applicable Law to collect and use boulders, stones, shingles, and other building materials, except precious and semi-precious materials, from the river beds, and/or from the land on payment of royalty in accordance with the GoMP rules/rates in force from time to time and upon obtaining NOC from concerned departments of GoMP as the case may be for collection of such materials.

4.2.3. Up-gradation of roads and bridges :

The GoMP shall permit the Company to construct roads, bridges, culverts as considered necessary for the Project at the Site in consultation with State public works department at the cost of the Company.

5. SYNCHRONIZATION, COMMISSIONING AND COMMERCIAL

5.1. Synchronization :

- 5.1.1. The Company shall give the GoMP, the Procurer and SLDC at least 60 (sixty) days advance preliminary written notice and at least 30 (thirty) days advance final written notice, of the date on which it intends to synchronise a Unit to the Grid System.
- 5.1.2. Subject to Article 5.1.1, a Unit may be synchronised by the Company to the Grid System when it meets all connection condition prescribed in Grid Code then in effect and otherwise meets all other legal requirements for synchronisation to the Grid system.

5.2. Incentives for early commercial operation of the Project :

If COD is achieved earlier than Scheduled COD as specified in the approved DPR, the Company shall be entitled for incentive-i.e. exemption from supply of Free Power for the period from the COD to the Scheduled COD.

5.3. Penalty for delay in commercial operation of the Project :

- 5.3.1. If the Project gets commissioned after the Scheduled COD, the obligation of the Company to compensate for the loss of Free Power (calculated on the basis of Project capacity, as in approved DPR and 30 (thirty) % capacity utilization factor), shall be applicable from the date of Scheduled COD, except in the delay is on an account of Force Majeure. The Company shall compensate for the loss by supplying equivalent quantity of free power after the Revised Schedule Commercial Operation Date; this compensation shall be addition to the committed free power.
- 5.3.2. PPA for supply of free power shall be executed by MP Power Management Company Limited. The PPA document shall be as per the approval of MPERC.

6. REPRESENTATIONS AND WARRANTIES

6.1. Representations and Warranties of the Company :

- 6.1.1. The Company represents and warrants to the GoMP that as of the date hereof;
 - i. The Company has all requisite power and has been duly authorized to execute and consummate this Agreement;
 - ii. This Agreement is enforceable against the Company in accordance with its terms;
 - iii. The consummation of the transactions contemplated by this Agreement on the part of the Company will not violate any provision of nor constitute a default under, nor give rise to a power to cancel any charter, mortgage, deed of trust or lien, lease, agreement, license, permit, evidence of indebtedness, restriction, or other contract to which the Company is a party or to which the Company is bound which violation, default or power has not been waived.
 - iv. The Company and/or successful bidder/applicant has neither made any statement nor provided any information in the selected bid/application/proposal, which was materially inaccurate or misleading at the time when such statement was made or information was provided. Further, all the confirmations, undertakings, declarations and representations made in the selected bid/application/proposal are true and accurate and there is no breach of the same;

6.1.2. In the event that any of the representations and warranties made by the Company in the Article above are found to be not true or are incorrect, the occurrence of such event would amount to a Company event of default under Article 8.2 of this Agreement and the GoMP shall have the right to terminate this Agreement in accordance with this Agreement.

6.2. Representations and Warranties of the GoMP :

The GoMP represents and warrants to the Company that as of the date hereof;

- i. The GoMP has all requisite powers and has been duly authorized to execute and consummate this Agreement;
- ii. The execution and delivery of this Agreement by the GoMP does not violate the provision of any existing law or notification or regulation or order or decree of any court, government authority, or of agency or of any contract, undertaking or agreement, to which the GoMP is a party or which is binding on GoMP.

7. FORCE MAJEURE

i. Subject to Article 7.5, Force Majeure shall mean any event or circumstances or combination of events or circumstances including but not limited to those stated below that wholly or partly prevents or unavoidably delays any Party in the performance of its obligations under the Agreement, but only if and to the extent that such events and circumstances are not within the reasonable control, directly or indirectly, of the affected Party and could not have been avoided even if the affected Party had taken reasonable care or complied with Prudent Utility Practices.

Act of god, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the Project), earthquake volcanic eruption, landslide, flood, could burst, cyclone, typhoon, tornado, or exceptionally adverse weather conditions which are in excess of the statistical measures for the last 100 (hundred) years;

Nationalization or compulsory acquisition by any Governmental instrumentality under the State of Madhya Pradesh or the Government of India of any material assets or rights of the Company;

The unlawful, unreasonable or discriminatory revocation of, refusal to renew, any Consents, Clearances and Permits required by the Company to perform its obligations under this Agreement or any unlawful, unreasonable or discriminatory refusal to grant any Consents, Clearances and Permits required for the operation of the Project, provided that a competent court of Law declares the revocation or refusal to be unlawful. Unreasonable and discriminatory and strikes the same down.

Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo; revolution, riot, insurrection, terrorist or military action.

- ii. In the event a Party is rendered unable to perform any obligations required to be performed by it under the Agreement by Force Majeure, the particular obligations shall, upon notification to the other Party, be suspended for the period of Force Majeure.
- iii. Upon the occurrence of an event of Force Majeure, the Party claiming that it has been rendered unable to perform any of its material obligations under the Agreement, shall notify the other Party in writing within 30 days of the commencement thereof giving the particulars and satisfactory evidence in support of its claim. Upon termination of such event of Force Majeure, the affected Party shall, within 7 days of its termination, intimate the other Party of such termination.
- iv. Time for performance of the relative obligations suspended by Force Majeure shall then stand extended by the period of delay which is directly attributable to Force Majeur. The Party giving, such notice

shall be excused from timely performance of its obligations under the Agreement, for so long as the relevant event of Force Majeure continues and to the extent that such Party's performance is prevented, hindered or delayed, provided the Party or Parties affected by the event, of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its performance of the obligations under the Agreement.

v. Force majeure shall expressly not include the following, except to the extent resulting from a Force Majeur:

- Unavailability, late delivery or changes in cost of plant, machinery, equipment, materials, spare parts, or consumables for the Project;
- A delay in the performance by any contractor(s);
- Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment; and
- Strikes or labour disturbance at the facilities of the affected Party;
- Insufficiency of finances or funds or the Agreement becoming onerous to perform;
- Landslides which are caused by the contractors work
- Non-performance caused by, or connected with, non-performing Party's;
- Negligent or intentional acts, errors or omissions,
- Failure to comply with any of the Laws of India, and of the Government, and
- Breach of or default under the Agreement.

vi. Prolonged Force Majeure:

If a Force Majeure event continues beyond a continuous period of 12 (twelve) months from the date of its occurrence or such other period as may be mutually agreed to by the Parties, and thereafter either Party shall have the right to terminate the Agreement as per Article 10.

8. EVENT OF DEFAULT

8.1. GoMP event of default

The occurrence of and continuation of any of the following events shall constitute "GoMP Event of Default" unless such an event occurs as a result of a Company default, as defined in Clause 8.2:

- i. GoMP repudiates this Agreement "or otherwise" evidences an intention not to perform its obligations under, or to be bound by, this Agreement;
- ii. The material breach of any term of this Agreement other than-with respect to sub-clause (i) above;

8.2. Company event of default

The occurrence of and continuation of any of the following events shall constitute "Company Event of Default" if such an event does not occur as a result of any Force Majeure event or a GoMP event of default, as defined in Article 8.1:

- i. The Company repudiates this Agreement or otherwise evidences an intention not to perform its obligations under, or to be bound by, this Agreement;
- ii. The failure of Company to commission any Unit by the date falling after its Revised Scheduled Commercial Operation Date;
- iii. If the Company:
 - assigns or purports to assign any of its assets or rights in violation of this Agreement; or
 - transfers any of its rights and/or obligations under this Agreement, in violation of this Agreement;
- iv. if
 - the Company becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of 30 (thirty) days, or
 - any winding up or bankruptcy or insolvency order is passed against the Company, or
 - the Company goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that, a dissolution or liquidation of the Company will not be an event of default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company continues to meet the requirements as per Policy till COD of the Project and retains creditworthiness similar to the Company and expressly assumes all obligations of the Company under this Agreement and is in a position to perform them;
- v. the Company fails to complete/fulfill the activities/conditions specified in Article 3.1 beyond the specified period (Article 3.1) and the right of termination under Article 3.3.1 is invoked by the GoMP; or
- vi. the Company is in material breach of any of its obligations pursuant to this Agreement and such material breach is not rectified by the Company within 30 (thirty) days of receipt of notice in this regard from the GoMP; or
- vii. any direct or indirect change in the shareholding of the Company in contravention of the terms of this Agreement.

8.3. Cure period

- i. Upon the occurrence of an event of default by a Party (Defaulting Party) pursuant to Articles 8.1 or 8.2, the other Party (Non-Defaulting Party) has the right to issue a notice of default, specifying in reasonable detail the event of default giving rise to the notice of default.
- ii. On receipt of the notice of default, the Defaulting Party shall take immediate steps to cure such a default within a period of 90 (ninety) days from the receipt of the notice of default with due notice to the Non-Defaulting Party of steps taken by it to cure the event of default.
- iii. In the event, the reasons leading to the event of default have been cured to the reasonable satisfaction of the Non-Defaulting Party, the notice of default shall cease to have any effect.

8.4. Remedies available to the Company

Upon the occurrence and continuation of a GoMP event of default under Article 8.1 above, and the failure by the GoMP to cure such a default within the applicable cure period, specified in Article 8.3, the Company shall have the right to terminate this Agreement by notice to the GoMP in accordance with the procedures set forth in Article 9.

8.5. Remedies available to the GoMP

Upon the occurrence and continuation of a Company event of default under Article 8.2 above, and the failure by the Company to cure such a default within the applicable cure period, specified in Article 8.3, the GoMP shall have the right to terminate this Agreement by notice to the Company in accordance with the procedures set forth in Article 9.

9. TERMINATION AND TAKING OVER OF THE PROJECT

9.1. Termination

9.1.1. Notice of Termination

This Agreement may be terminated on serving a 30(thirty) days notice (Notice of Termination) by:

- i. The Company, in case of a GoMP event of default pursuant to Article 8.1;
- ii. The GoMP, in case of a Company event of default pursuant to Article 8.2;
- iii. The GoMP, in case the Company fails to comply with any of the obligations under Article 4.1
- iv. if either Party is unable to perform any obligations required to be performed under this Agreement due to Force Majeure for a continuous period of 12 (twelve) Months as per Article 3.3.4, 7.6;
- v. In the event of enactment of any law or regulation or any subsequent act of any GoI, or Government of Madhya Pradesh authority, which makes the performance of this Agreement, impossible for any Party;
- vi. In the event it is terminated before its expiry under Article 2.3

- 9.1.2. On the expiry of the Notice of Termination, the Party which served the Notice of Termination shall be entitled to terminate this Agreement under intimation to the other Party, unless the event leading to the Notice of Termination has been rectified or complied with to the satisfaction of the Party which issued the Notice of Termination.

9.2. Take Over

As a result of the Notice of Termination issued pursuant to Article 9.1.1 and application of article 9.1.2, the Project shall be taken over by the GoMP and the Agreement shall stand terminated.

10. GOVERNING LAWS & RESOLUTION OF DISPUTES

This Agreement shall be governed by and construed in accordance with the applicable Laws in the State of Madhya Pradesh. The Court at Bhopal shall have exclusive jurisdiction in all matters arising under this Agreement.

11. MISCELLANEOUS

11.1. Promoter's Equity in the Company

The Company has been incorporated as a company under the (Insert the relevant Act under which the company has been incorporated) by the successful bidder/applicant for the implementation of the Project with its registered office at (Insert place of registered office).

All rights and obligations of the successful bidder/applicant have been transferred to the Company. The aggregate Equity contribution of the successful bidder/applicant in the Company shall not be less than the following :

- i. 26% (fifty one percent) during the construction period and until 5 (five) years following the commencement of Commercial Operations :
- Provided that, in case the successful bidder/applicant is holding Equity through affiliate/s, ultimate parent company or parent Company, such restriction as specified in (a) above shall apply to such entities:
- Provided further, that in case the successful bidder/applicant is a bidding consortium, the lead member shall continue to hold Equity of at least 26% (fifty one percent) up to a period of 5 (five) years after COD of the Project and any member of such bidding consortium shall be allowed to divest its Equity as long as the other remaining members (which shall always include the lead member) hold the minimum Equity specified in (a) above.

11.2. Language

The language of this Agreement shall be English. All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to the Agreement shall be in writing and in English language

11.3. Relationship of the Parties

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership or agency or any such other relationship between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative or, or to otherwise bind, the other Party.

11.4 Assignment

The Agreement shall not be assigned by either Party except by mutual consent of the parties in writing. Notwithstanding the foregoing for the purpose of financing the Project, the Company may assign or create security over its rights and interests under or pursuant to the Agreement.

11.5 Indemnity

The Company shall not be fully responsible for any damage or loss, including third party claims arising out of the construction, operation or maintenance of the Project to any property or persons and also undertakes to indemnify the GoMP on such account.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS AGREEMENT TO BE EXECUTED BY THEIR DULY AUTHORISED REPRESENTATIVES AS OF THE DATE AND PLACE SET FORTH ABOVE.

For and on behalf of
project developer
Name Designation and Address

.....
.....

Signature with Seal

Witness

1.

2.

For and on behalf of
Commissioner New & Renewable Energy
Name Designation and Address

.....
.....

Signature with Seal

Witness

1.

2.

12. Schedule 1 : List of Documents

- i. Copy of Letter of Allotment No.....Dated.....
- ii. Copy of Company's letter accepting Letter of Allotment-No.....Dated.....
- iii. Copy of the receipt for payment of performance guarantee (initial) of amount Rs.by Company to GoMP (payment Moderef. No.bank.....dated.....)

- iv. Notarized undertaking by the Company for payment of additional performance guarantee within the timeline as specified in the Agreement;
- v. Notarized undertaking by the Company to complete commissioning of the Project by the Scheduled COD, which shall not be later than the timelines, as specified in the Agreement.
- vi. Notarized undertaking by the Company for the payment of balance commitment fee/project fee (select as appropriate) and balance performance guarantee respectively, within the timeline as specified in the Agreement, if the Installed Capacity of the Project is increased pursuant to the approval accorded by GoMP to the DPR; and
- vii. Copy of GoMP's notification No. 482, dated 03 November, 2011.

13. Schedule 2 : Format for Bank Guarantee

[To be on non-judicial stamp paper of appropriate value as per Stamp Act relevant to place or execution. Foreign entities submitting Bids are required to follow the applicable law in their country]

In consideration of the.....(Insert name of the Successful bidder/applicant on behalf of the Company) agreeing to undertake the obligations under the Hydro Power Development Agreement and the other bid/application documents and the Government of Madhya Pradesh (hereinafter referred to as GoMP), agreeing to execute the Agreement and the other bid/application documents inter alia with the Company, regarding setting up of the (insert name of the Project) Small Hydro Power Project to the capacity ofMW on BOOT basis, at(Insert name of the place) for supply of Free Power there from on long term basis for meeting the requirements of the Procurer, the(insert name and address of the bank issuing the guarantee and address of its head office) (hereinafter referred to as "Guarantor Bank") hereby agrees unequivocally, irrevocably and unconditionally to pay to the GoMP at (Insert the Place from the address of the GoMP indicated in the Agreement) forthwith on demand in writing from the GoMP or any officer authorised by it in this behalf, any amount upto and not exceeding Rupeesonly (Insert the amount of the bank guarantee as per this agreement), on behalf of M/s(Insert name of the Company or the successful bidder/applicant on behalf of the Company).

This guarantee shall be valid and binding on his Guarantor Bank upto and including(Insert date on the 3 (three) months from the Revised Scheduled Commercial Operation Date) and shall in no event be terminable by notice or any change in the constitution of the Guarantor Bank or the terms and conditions of the Agreement or by any other reasons whatsoever and our liability hereunder shall not be impaired or discharged by any extension of time or variations or alterations made, given, or agreed with or without our knowledge or consent, by or between parties to the respective agreement.

Our liability under this Guarantee is restricted to Rs.....(Rs.only). Our Guarantee shall remain in force until(Insert date on the 3 (three) months from the Revised Scheduled Commercial Operation Date) the GoMP shall be entitled to invoke this Guarantee till(Insert date which is 30 days after the date in the preceding sentence) being 30 (thirty) days of the last date of the validity of this Guarantee by issuance of a written demand to invoke this Guarantee.

The Guarantor Bank hereby agrees and acknowledges that the GoMP Shall have a right to invoke this BANK GUARANTEE in part or in full, as it may deem fit.

The Guarantor Bank hereby expressly agrees that it shall not require any proof in addition to the written demand by the GoMP, made in any format, raised at the above mentioned address of the Guarantor Bank, in order to make the said payment to the GoMP.

The Guarantor Bank shall make payment hereunder of first demand without restriction or conditions and notwithstanding any objection by.....(Insert name of the Company/successful bidder or applicant on behalf of the Company) and/or any other person. The Guarantor Bank shall not require the GoMP to justify the invocation of this BANK GUARANTEE, nor shall the Guarantor Bank have any recourse against the GoMP in respect of any payment made hereunder.

This BANK GUARANTEE shall be interpreted in accordance with the laws of India and the Court at Bhopal shall have exclusive jurisdiction.

The Guarantor Bank represents that this Bank Guarantee has been established in such form and with such content that it is fully enforceable in accordance with its terms as against the Guarantor Bank in the manner provided herein.

This BANK GUARANTEE shall not be affected in any manner by reason of merger, amalgamation, restructuring, liquidation, winding up, dissolution or any other change in the constitution of the Guarantor Bank.

This BANK GUARANTEE shall be a primary obligation of the Guarantor Bank and accordingly the GoMP shall not be obliged before enforcing this BANK GUARANTEE to take any action in any court or arbitral proceedings against the(Insert name of the Company/successful bidder or applicant on behalf of the Company), to make any claim against or any demand on (Insert name of the Company/successful bidder or applicant on behalf of the Company) or to give any notice to.....(Insert name of the Company/successful bidder or applicant on behalf of the Company) or to enforce any security held by the GoMP or to exercise, levy or enforce any distress, diligence or other process against.....(Insert name of the Company/successful bidder or applicant on behalf of the Company).

The Guarantor Bank acknowledges that this Bank Guarantee is not personal to the GoMP and may be assigned, in whole or in part, (whether absolutely or by way of security) by GoMP to any entity to whom the GoMP is entitled to assign its rights and obligations under the Agreement.

Notwithstanding anything contained hereinabove, our liability under this Bank Guarantee is restricted to Rs.(Rs. only) and it shall remain in force until (Date to be inserted on the 3 (three) months from the Revised Scheduled Commercial Operation Date, inclusive of an additional claim period of 30 (thirty) days thereafter). We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the GoMP serves upon us a written claim or demand. This Bank Guarantee shall be extended from time to time for such period, as may be desired by.....((Insert name of the Company/successful bidder or applicant on behalf of the Company) We are liable to pay the guaranteed amount or any part thereof under this Bank Guarantee only if the GoMP serves upon us a written claim or demand.

In witness whereof the Bank, through its authorized officer has set its hand and stamp on thisdays of 2012 at.....

Witness :

(Signature)

Name

Address :

(Signature)

Name:

Address :

Power of Attorney No.

For

(Insert Name of the Bank)

Bankers Stamp and Full Address Dated

This.....day of, 20.....

कल्पना जैन, अवर सचिव.

परिशिष्ट-तीन

विषय।—जल विद्युत् परियोजना के क्रियान्वयन हेतु “जल विद्युत् विकास अनुबंध (HPDA)” का प्रारूप। .

संदर्भ।—आपकी टीप क्रमांक 70/2013/60, दिनांक 21-1-2013.

कृपया संदर्भित टीप का अवलोकन करने का कष्ट करें, जिसके द्वारा लघु जल विद्युत् आधारित जल विद्युत् परियोजना के क्रियान्वयन की नीति के तहत हस्ताक्षरित किये जाने वाले जल विद्युत् विकास अनुबंध (HPDA) के संबंध में मंत्रि-परिषद् के समक्ष प्रस्तुत की जाने वाली संक्षेपिका पर विभागीय अभिमत चाहा गया है।

2. उपरोक्त संबंध में संक्षेपिका के साथ संलग्न जल विद्युत् विकास अनुबंध पर ऊर्जा विभाग का अभिमत निम्नानुसार है :—

- i. The Clause C&E indicates that HPDA is for self identified sites, but as per SHP policy 2011 there are two categories of projects i. e. projects identified by the GoMP/Govt. undertakings and projects identified by the developers. Hence provisions need to be modified accordingly.
- ii. In the clause “E” there is no mention regarding obtaining No Objection Certificate (NOC) from NVDA, whereas NOC will be required from NVDA for projects in Narmada Basin. The clause may therefore be suitably modified.
- iii. In the clause 3.1.2 it is mentioned that there will be no reduction in commitment fees if installed capacity is reduced after preparation of DPR. As the technical parameters are provided by NRED, its verification is only possible after preparation of DPR hence commitment fees should be reduced proportionately. However, project fee can be the same as the technical parameters are provided by the developers.
- iv. In the clause 5.3.2 of HPDA it is mentioned that PPA for supply of free power will be executed by MPPMCL. Approval of this PPA shall be obtained from MPERC and it should be made integral part of HPDA.

मोहम्मद सुलेमान, प्रमुख सचिव, ऊर्जा.

प्रमुख सचिव,
नवीन एवं नवीकरणीय ऊर्जा विभाग

ऊर्जा विभाग की उपरोक्त अभिमत के अनुबंध में समाहित कर लिया गया है।

अनुबंध के जिन कण्डिकाओं में जल संसाधन विभाग का उल्लेख है, उन कण्डिकाओं का विश्लेषण कर प्रस्तावित संशोधन निम्नानुसार है :—

S. No.	Para No. of proposed agreement	Present Proposal	Modified Proposal	Remark
(1)	(2)	(3)	(4)	(5)
Para “E”	The company (insert in case of self identified site-single application for any particular site) has submitted a proposal for the development of above mentioned project at its self-identified site. Also the project has been issued No. objection Certificate (herein referred as “NOC”) by the Water Resources Department via letter (ref No. dated.....).	The company (insert in case of self identified site—single application for any particular site) has submitted a proposal for the development of above mentioned project at its self-identified site. Also the project has been issued No Objection Certificate (herein referred as “NOC”) by the Water Resources Department vide letter (ref. No.Dated.....).		

(1)	(2)	(3)	(4)	(5)
	Para “3.2.1” . The GoMP shall validate the DPR..... and the project to the company. The developer shall submit atleast 3 months prior to submission of DPR the required hydraulic design of the hydro power structures for obtaining approval of the concerned department. (NVDA/WRD/MPPGCL etc. as may be required)”		The GoMP shall validate the DPR and the project to the company. The developer shall submit atleast 3 months prior to submission of DPR the hydrology, hydraulic design & water planning of the hydro power structures as per IS: 6966 for obtaining approval of the concerned department. (NVDA/WRD/MPPGCL etc. as may be required)”	
Para 4.1.8	The company shall ensure such minimum flow of water immediately downstream of the weir/barage/dam for downstream requirement as specified by concerned department of GoMP to meet the demand of irrigation, drinking water etc. which shall always have first right.		The company shall ensure such minimum flow of water immediately downstream of the weir/ barrage/dam for downstream requirement as specified by concerned department of GoMP during clearance of water planning as per para 3.2.1 to meet the demand of irrigation, drinking water etc. which shall always have first right.	
4.1.8.1			No water charges will be levied if there is no loss of diverted water during operation and the diverted quantity is released back to parent stream without any loss.	
4.1.8.2			If company desires to utilize any water other than generation of power, then for use of such water separate permission has to be obtained from Water Resources Department, GoMP.	
4.1.8.3			Whenever GoMP decides to levy water charges for water used in SHP, then such charges shall be payable.	

हस्ता./-

(कल्पना जैन)

अवर सचिव.

Sd./-

(S. K. KHARE)

CE, BODHI.